

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DALLAS BUYERS CLUB, LLC, a Texas  
limited liability company,  
  
Plaintiff,  
  
v.  
  
DOE-174.65.2.54,  
  
Defendant.

Case No.: 15cv1615-BAS (DHB)

**ORDER DENYING PLAINTIFF'S  
MOTION TO USE INFORMATION  
AND ADDITIONAL TIME TO  
SERVE COMPLAINT[ECF No. 9]**

On July 21, 2015, Plaintiff filed a Complaint against Doe, a subscriber assigned IP address 174.65.2.54 (“Defendant”). (ECF No. 1.) Plaintiff alleges a single cause of action for direct copyright infringement of the motion picture *Dallas Buyers Club*. On August 20, 2015, the Court granted Plaintiff leave to subpoena records from Internet Service Provider (“ISP”) Cox Communications in order to learn the identity of the account holder assigned to Defendant’s IP address. (ECF No. 8.) The Court permitted the early discovery so that Plaintiff would be able to identify and serve Defendant. The Court specifically limited the scope of the subpoena to requesting the subscriber’s name and address. The Court expressly prohibited Plaintiff from requesting any other contact information, such as a telephone number or email address.

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1 According to Plaintiff, Cox Communications responded to the subpoena on  
2 October 7, 2015. The subpoena response included the telephone number associated with  
3 the subscriber, despite the Court's order. Plaintiff now requests permission to use the  
4 phone number. Plaintiff also seeks an additional 120 days to serve the Complaint so that  
5 it can "continue discovery." (ECF No. 9.)

6 The Court has already determined that a name and address was sufficient  
7 information to permit Plaintiff to serve the Complaint. The Court also already found that  
8 additional discovery beyond the subpoena was not appropriate at this juncture in the  
9 litigation. The fact that Plaintiff gratuitously came into possession of the telephone  
10 number associated with the Doe Defendants' IP address does not change the Court's prior  
11 reasoning. The purpose of early discovery in an action such as this is "to permit the  
12 plaintiff to learn the identifying facts necessary to permit service on the defendant."  
13 *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 577 (N.D. Cal. 1999) (citing  
14 *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)). Early discovery is not intended  
15 to facilitate a plaintiff's efforts to communicate with a Doe defendant or pursue pre-  
16 service-of-process settlement negotiations. *See e.g. Hard Drive Productions, Inc. v. Does*  
17 *1-90*, 2012 WL 1094653, \*6 (N.D. Cal. Mar. 30, 2012) (denying request for early  
18 discovery in a copyright infringement action and expressing concern that the plaintiff  
19 would use the subscriber information to pursue an "extrajudicial business plan" of  
20 extracting settlement payments from potential infringers); *Malibu Media LLC v. John*  
21 *Doe*, 13-cv-435-LAB-DHB, ECF No. 11 (S.D. Cal. Aug. 14, 2013) (denying motion to  
22 quash subpoena to ISP provider for name and address of subscriber, but limiting the use  
23 of the information "for service of process only" and restricting the plaintiff from  
24 contacting the doe defendant under after an answer was filed); *Patrick Collins, Inc. v.*  
25 *John Does 1-6*, 2012 U.S. Dist. LEXIS 77486 (S.D.N.Y June 1, 2012) (permitting early  
26 discovery but stating "[t]he Court can see no reason why the disclosure of the Doe  
27 defendants' telephone numbers is necessary at this stage of the litigation to preserve  
28 Plaintiff's copyright interests."). Here, Plaintiff has not shown how use of the telephone

1 number will lead to service of the Complaint. Plaintiff has received a name and address  
2 from Cox Communications, and that should be sufficient. Plaintiff's request to use the  
3 telephone number provided by Cox Communications is therefore, **DENIED**.

4 Further, Plaintiff has not shown that it will be unable to serve the Complaint within  
5 the time frame provided by Rule 4 of the Federal Rules of Civil Procedure. Indeed,  
6 beyond mailing unofficial letters to the address provided by Cox Communications, it  
7 does not appear Plaintiff has made any effort to actually serve the Complaint. The  
8 Complaint was filed on July 21, 2015. Therefore, Plaintiff has approximately 2 more  
9 weeks to effectuate service. Because there is still time remaining for Plaintiff to timely  
10 serve the Complaint, Plaintiff's request for additional time is **DENIED without**  
11 **prejudice**. If Plaintiff attempts, but is unable to serve the Complaint before the 120 day  
12 period expires, Plaintiff may request an extension of time from the district judge assigned  
13 to this case.

14 **IT IS SO ORDERED.**

15 Dated: November 5, 2015

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17 Hon. David H. Bartick

18 United States Magistrate Judge  
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